

# Exhibit 1

**CERTIFIED COPY**

Dr. David Markenson

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL ACTION NO. 18-5629

MONIQUE RUSSELL, JASMINE  
RIGGINS, ELSA M. POWELL,  
and DESIRE EVANS,

Plaintiffs,

vs.

EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES,

Defendant.

Deposition of DR. DAVID

MARKENSON taken in the above-entitled matter  
before Suzanne J. Stotz, a Certified Realtime  
Reporter, Registered Professional Reporter, and  
Notary Public of the State of Colorado, taken  
at the WESTIN DENVER AIRPORT, 8300 Pena  
Boulevard, Denver, Colorado 80249, on  
October 22, 2019, commencing at 10:14 a.m.

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1 I'm going to talk about a couple of them just  
2 to make sure I understand.

3 So the third failing down, if you  
4 will -- I don't have a better way to refer to  
5 it -- says -- oh, no, you know what, we talked  
6 about that one already.

7 Keep on going down to the one that  
8 talks about the diploma from the University of  
9 Ibadan. It says, "Failing to reasonably  
10 investigate Akoda's diploma from the University  
11 of Ibadan."

12 Do you see that?

13 A. Yes.

14 Q. That looks like the fifth one down.

15 A. Correct.

16 Q. Which diploma are you talking about  
17 because I don't believe I've seen a diploma  
18 from the University of Ibadan with Akoda's name  
19 on it?

20 A. Let's see. Can I go back to the --

21 Q. Sure. You can look at the exhibits  
22 we were looking at.

23 A. Thank you so much. Yeah.

24 I am wondering whether that is --

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1 Q. And on page 4, there is a, sort of  
2 the second full paragraph down, if you will --  
3 it's just one line. It says, "ECFMG breached  
4 the standard of care in, among others, the  
5 following ways."

6 Do you see that?

7 A. Yes, I do.

8 Q. And then there's a number of  
9 entries, all starting with the word "failing"  
10 on the rest of page 4 and at the top of page 5.

11 Do you see that?

12 A. Yes, I do.

13 Q. And are those each an opinion that  
14 you're offering in this case?

15 A. Yes, that is.

16 Q. Okay. And we talked about the  
17 standard of care a few minutes ago.

18 Were you referring to the same  
19 standard of care here that you have been  
20 previously in your report?

21 A. Yes.

22 Q. Okay. I'm not going to go through  
23 every single one because some of them  
24 conceptually we've talked about already, but

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1 but you don't have a license, yes, you cannot  
2 practice medicine.

3 Before you ask another question, is  
4 this an okay time to break?

5 Q. Sure. Absolutely.

6 A. I saw you reading up. I just  
7 wanted to make sure.

8 Q. Go ahead.

9 A. Thank you.

10 MS. McENROE: Let's take a break.

11 (Discussion held off the record.)

12 THE VIDEOGRAPHER: The time is  
13 2:10 p.m., and we are going off the  
14 record.

15 (Whereupon, a short break was  
16 taken.)

17 THE VIDEOGRAPHER: The time is  
18 2:20 p.m., and we are back on the record.

19 BY MS. McENROE:

20 Q. We were just looking at your expert  
21 report at Exhibit 4 before we went off the  
22 record.

23 Do you recall that, Dr. Markenson?

24 A. Yes.

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1 program is binary, off and on or, you know, one  
2 year of supervised practice, however you had  
3 described it is binary off and on, you either  
4 have that or you don't, that's another place  
5 along the line, right? That would either  
6 on/off shut off the practicing medicine in the  
7 United States?

8 A. It depends on what the requirements  
9 were.

10 Q. And further stepping down the line,  
11 eventually getting to the point of getting a  
12 medical license is also off and on that in any  
13 given jurisdiction, if you don't have a medical  
14 license, you should not be lawfully be  
15 practicing medicine, correct?

16 A. Yes. Without a medical license,  
17 you can't practice medicine.

18 Q. So that's another off/on switch,  
19 correct?

20 A. A medical license is an off/on,  
21 yes.

22 Q. Even if you have a ECFMG  
23 certificate?

24 A. If you have an ECFMG certificate

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1 obtain licensure or enter a residency had  
2 ECFMG done the due diligence, picked up  
3 the red flags and not certified him or  
4 revoked the certification.

5 BY MS. McENROE:

6 Q. So does your opinion basically boil  
7 down to an on/off switch, that if ECFMG had  
8 said he couldn't get a certificate, therefore,  
9 he wouldn't have been able to practice  
10 medicine; is that what you're saying?

11 A. Well, as part of application for  
12 residency and licensure, there are certain  
13 things that are binary, yes or no; and in the  
14 absence of them, you don't proceed to any other  
15 steps.

16 ECFMG certification is a credential  
17 that's binary. You don't have it, you can't  
18 get into residency. Absent ECFMG  
19 certification, you can't be licensed. It is a  
20 binary, that all the other things downstream  
21 don't occur towards licensure if that binary  
22 doesn't occur.

23 Q. So if we were to take a step  
24 forward and say graduation from a residency

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1 links throughout a career that could have  
2 stopped a progression of events.

3 Q. So I'm just struggling with the  
4 idea that this is like the ultimate Monday  
5 morning quarterbacking, right? You're saying  
6 this person ended up being a sexual predator.  
7 So looking back in history, we could pick up  
8 bread crumbs where someone could have, said,  
9 you don't graduate from middle school; you  
10 don't graduate from high school; you don't  
11 graduate from college.

12 So I'm just trying to understand --  
13 MS. McENROE: Let me finish my  
14 question.

15 MR. VETTORI: I am.

16 BY MS. McENROE:

17 Q. I'm just trying to understand how  
18 it is you pick where in that line you assume  
19 and assign all of the fault, as you have with  
20 ECFMG in this case?

21 MR. VETTORI: Objection as to form.

22 THE WITNESS: Where I've assigned  
23 fault is the area I was asked to opine on,  
24 which is he would not have been able to



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1 Q. Sexual predators.

2 MR. VETTORI: Is that a technical  
3 term?

4 MS. McENROE: I changed it to  
5 sexual predators.

6 BY MS. McENROE:

7 Q. Okay. Is that fair?

8 A. There are, yes. Unfortunately,  
9 yes.

10 Q. And do you deem that to be a  
11 failure of the medical school community or, you  
12 know, or is that that practitioner's fault that  
13 they went on to be somebody who breaks the law?

14 A. It is the practitioner's fault, but  
15 there is well documented studies that show that  
16 there are usually red flags throughout their  
17 career if people intervene, that patient would  
18 have never been harmed.

19 Q. Usually, like, while they're  
20 actually practicing medicine.

21 A. No. There's throughout their  
22 entire career. There's well documented studies  
23 that show whether it's medical school  
24 residency, application processes, there are

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1           A.       No. But if in order to practice  
2 tax, they needed ECFMG certification to be  
3 licensed, then they would have never been  
4 allowed to practice tax.

5                   So I don't -- I don't hold them  
6 accountable to law enforcement; but anything  
7 that an individual was allowed to do based on  
8 their certification, they do have culpability  
9 in that case.

10          Q.       So you think if a practitioner, a  
11 physician, goes on to be a creep, a sexual  
12 predator, is that somehow ECFMG'S fault if  
13 ECFMG had certified that that person had, in  
14 fact, graduated from medical school and passed  
15 exams?

16          A.       Well, what they did was their  
17 action at that point; but one has to  
18 acknowledge that if ECFMG did not allow them  
19 to -- did not certify them, allowing them to  
20 obtain a license, they would not be a physician  
21 at that point.

22          Q.       Right. But there are U.S. graduate  
23 physicians who go on to become creeps, right?

24          A.       There are.

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1           A.       No. But if in order to practice  
2 tax, they needed ECFMG certification to be  
3 licensed, then they would have never been  
4 allowed to practice tax.

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6 accountable to law enforcement; but anything  
7 that an individual was allowed to do based on  
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20 obtain a license, they would not be a physician  
21 at that point.

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23 physicians who go on to become creeps, right?

24          A.       There are.

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1           A.       Again, since I wasn't provided them  
2       and all I have is the draft, I can't say that.

3           Q.       So you don't know what the policies  
4       and procedures are as we sit here today?

5           A.       I just know the standard. I don't  
6       know what their -- I've asked for policies and  
7       procedures, and we haven't been provided any.

8           Q.       You say "we." You mean you haven't  
9       been provided any, correct?

10          A.       Uh-huh, correct.

11          Q.       Is it your opinion that ECFMG has a  
12       duty or an obligation to make sure that  
13       individuals it certifies never break the law?

14          A.       Again, I personally believe -- this  
15       is from my expertise and knowledge -- that  
16       ECFMG'S role is not as a law enforcement agency  
17       but a certification body.

18          Q.       Okay. And so I just want to make  
19       sure I understand.

20                    So if ECFMG certifies someone and  
21       they go on to commit tax fraud later on in  
22       their career, would you then look back and hold  
23       ECFMG accountable that they should have figured  
24       that out?

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1 Q. So is your participation with the  
2 clear evaluation process, are you sitting on a  
3 committee of ACGME?

4 A. Committee, yes.

5 Q. Is that a volunteer position?

6 A. Yes, it is.

7 Q. And when did you begin that?

8 A. I believe about a year and a half  
9 ago.

10 Q. Any other current involvement in  
11 residency programs?

12 A. Not direct, no.

13 Q. Not directly, but anything else  
14 indirectly?

15 A. I still have academic appointments  
16 at Columbia University in New York -- sorry,  
17 Colorado university and New York Medical  
18 College. So I could be asked to give a lecture  
19 from time to time within Colorado or in  
20 New York to residents.

21 Q. Do residents typically get  
22 lectures?

23 A. Yes.

24 Q. So just so that I understand, would

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1 Q. Do you still have any role or  
2 responsibilities for any residency programs?

3 A. Not directly anymore.

4 Q. When you say "not directly," do you  
5 indirectly?

6 A. I serve on a national committee  
7 with the ACGME.

8 Q. What role do you serve with ACGME?

9 A. They have a committee that oversees  
10 what's known as their clear clinical learning  
11 environment review program, and I serve on that  
12 committee.

13 Q. What does the clear committee do?

14 A. It helps them set the standards for  
15 the Clear Evaluation program.

16 Q. What is the Clear Evaluation  
17 program?

18 A. It evaluates hospitals' learning  
19 environments for residencies.

20 Q. Is that there accreditation  
21 program?

22 A. It is separate from the  
23 accreditation.

24 Q. Is it a higher level than

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1 schools, typically the Dean writes a letter for  
2 every graduate, which summarizes their medical  
3 school experience and provides evaluation of  
4 the student.

5 Q. And for U.S. medical school  
6 graduates, you said that as an initial  
7 screening for eligibility, there would be  
8 verification of medical school graduation; is  
9 that correct?

10 A. Correct.

11 Q. How would that usually be  
12 accomplished in your experience?

13 A. Through the ERAS process.

14 Q. What do you mean by that?

15 A. The programs themselves don't do  
16 it. It's done in the ERAS system. So that's  
17 the program that the residents apply through,  
18 and that program does the verification of the  
19 medical school.

20 Q. For lack of a better term, is it  
21 like a portal you can log into and check or  
22 how --

23 A. It's a portal you can log into and  
24 check.

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1           Q.       In your experience in hiring  
2 residents or residency programs, what, if  
3 anything, was done with the letters of  
4 reference that were submitted?

5           A.       Letters of reference are submitted  
6 through ERAS and then become part of an  
7 electronic file that the program director can  
8 review.

9           Q.       Do you know if anything else was  
10 done typically other than just review them?

11          A.       Typically they're just read by the  
12 residency director. Sometimes they would also  
13 be read by an interviewer prior to an  
14 interview.

15          Q.       Do you know if there was anything  
16 done typically to validate that the letters of  
17 recommend were legitimate?

18          A.       I know that -- I've never -- I've  
19 never seen a residency program do it, and I do  
20 not believe that ERAS's normal procedures --  
21 sorry -- are to verify them.

22          Q.       You mentioned a Dean's  
23 recommendation. What is that?

24          A.       So for graduates of U.S. medical



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1 A. Typically, yes.

2 Q. When you say "typically," do you  
3 know of any circumstances when they don't  
4 withhold taxes?

5 A. I believe it's different -- sorry.  
6 Hospitals employ them or the university  
7 sometimes does. Withholding is done as would  
8 be per whatever the employment standards are  
9 for taxes and other fees.

10 Q. Which would require, in addition to  
11 other potential information, a social security  
12 number?

13 A. That is correct.

14 Q. Do you know what the source of the  
15 social security number is for residents coming  
16 into residency programs? So I can say that  
17 another way. Strike that. Let me restate  
18 that.

19 Do you know from where the  
20 residency programs get the social security  
21 number for the applicants coming to them?

22 A. Again, I'm not involved in the HR  
23 department, but my understanding is it comes  
24 from the applicant.

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1 applications that you recall, you know, sitting  
2 here today?

3 A. Usually not, no.

4 Q. Is there usually an application  
5 form, like, they actually fill out like a job  
6 application?

7 A. They don't anymore. It's all done  
8 through the electronic system called ERAS.

9 Q. Okay. Previously, do you know  
10 whether there had been applications to  
11 residency programs in, say, the 2011 time  
12 frame?

13 A. There would have not been. They  
14 would have all been ERAS.

15 Q. Even then?

16 A. Yes.

17 Q. In your experience, do residents  
18 get paid?

19 A. Yes, they do.

20 Q. Do they get paid through any  
21 sources of funding in particular?

22 A. The hospital pays them.

23 Q. Does the hospital typically  
24 withhold taxes?

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1                   **What else, in your experience, is**  
2   **involved in the offering of a residency**  
3   **position to a resident?**

4           A.       The initial screening is done to  
5   make sure that the person is eligible for  
6   residency. So presence of medical school  
7   graduation, confirmation, or ECFMG  
8   certification.

9                   So it's sort of that's the first  
10   step. If they don't graduate medical school or  
11   they don't have an ECFMG certification, the  
12   process would stop.

13           **Q.       Okay.**

14           A.       Following that process, one that  
15   has letters of reference, Dean's  
16   recommendation, board scores; and there's  
17   usually a cutoff to determine of those who then  
18   obtain an interview.

19           **Q.       When you say "of those," you mean**  
20   **cutoff of the board scores?**

21           A.       Board scores, letters of reference,  
22   recommendations.

23           **Q.       Any other information collected or**  
24   **reviewed in connection with residency program**